THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.9249 of 2005

Date:07.02.2007

Between:

P.Somalakshmi and another.

PETITIONERS

AND

The Government of A.P. and others.

---------RESPONDENTS

ORDER:

The first petitioner is the wife of the second petitioner. By the year 1999, they had two daughters and one son. The first petitioner has undergone Tubectomy operation at Government Primary Health Center, Thorruru, on 27.02.1999. Petitioners 1 and 2 have begotten the third petitioner herein on 17.01.2001, despite the operation. It is stated that the family of petitioners 1 and 2 is very poor and on account of the birth of the third petitioner, they are overburdened, apart from undergoing physical and mental agony. They filed this writ petition with a prayer to award a sum of Rs.9,00,000/-, as compensation under various heads, against the respondents.

On behalf of the respondents, a common counter-affidavit is filed. It is stated that as a part of the family planning drive, several Tubectomy and Vasectomy operations were conducted at the fourth respondent primary health center on 27.02.1999 by well-trained Medical Officers, assisted by trained Para Medical Staff. It is stated that several hundreds of operations were conducted

earlier thereto in that center and there was no instance of any failure. Reference is also made to the declaration submitted by petitioners 1 and 2 to the effect that in the event of failure of the operation, they shall not hold the Government or its officials, responsible. The allegation of the first petitioner that when she went for medical aid on conceiving the fourth child, there was none to assist her at the fourth respondent primary health center, is denied

The learned counsel for the petitioners submits that having regard to the limited economic resources, the petitioners decided not to have any further children and accordingly, the first petitioner has undergone Tubectomy operation on 27.02.1999. He contends that the birth of the third petitioner has resulted not only in additional financial burden in the matter of bringing her up, but also, the physical and mental agony to petitioners 1 and 2. Placing reliance upon certain decided cases, he submits that the compensation claimed by the petitioners is reasonable.

The learned Government Pleader for Medical and Health, on the other hand, submits that the petitioners are estopped from making claim against the respondents, in view of their specific declaration. He further contends that the question as to whether there was any negligence on the part of the respondents can be decided on evidence and the petitioners have to file a suit, in case they intend to claim any damages. It is further urged that the claim made by the petitioners is speculative and exorbitant, in nature.

The fact that the first petitioner had undergone Tubectomy operation on 27.02.1999 and the fact that she gave birth to the third petitioner on 17.01.2001 are not disputed. The failure of the Tubectomy operation is manifest. The respondents have filed a copy of the declaration filed by petitioners 1 and 2 while

undergoing operation to the effect that they would not hold the Government or its officials responsible in case the operation is not successful. Even assuming that the operation failed, petitioners 1 and 2 could have approached any of the Government Hospitals at different levels, in which event, the medical termination could have been considered. The record discloses that they did not make any grievance till the third petitioner was born. Reference to these facts is made in the context of the filing of the writ petition straight away, at a belated stage, where it becomes difficult to appreciate the relevant circumstances, when no evidence is adduced.

The learned counsel for the petitioners places reliance upon the judgment of the Supreme Court in **STATE OF HARYANA v SMT.SANTRA**[1]**.** The respondent in that case had seven children and thereafter had undergone sterilization operation. On account of the failure of the same, she gave birth to the eighth child. She filed a suit, claiming a sum of Rs.2,00,000/- as damages. The necessary evidence was adduced and findings on disputed questions of fact were recorded. Ultimately the suit was decreed. The Supreme Court upheld the decree.

To the objection raised on behalf of the respondents that the petitioners ought to have filed the suit, the learned counsel for the petitioners places reliance upon the judgment of the Delhi High Court in **SHOBHA v GOVERNMENT OF NCT OF DELHI**[2]**.** In that case, the Delhi High Court entertained a writ petition filed by a woman, who gave birth to a child even after undergoing sterilization operation. It was rendered by a learned Single Judge and it is not known whether any appeal was preferred against it, either in the same High Court or before the Supreme Court. The Delhi High Court awarded a sum of Rs.3,25,000/-, as compensation under various heads.

Award of compensation, by its very nature, depends upon the proof of negligence on the part of the persons against whom it is claimed. The failure of the operation conducted upon the first petitioner is evident from the very fact that the third petitioner was born more than one year after the operation. However, before it is held that the failure was on account of negligence attributable to the respondents alone, specific facts are required to be pleaded and thereafter proved in a given case. Negligence on the part of the person, who has undergone the operation leading to failure, cannot be ruled out. The point of time at which the grievance is made out would also assume significance. If the complaint comes to be made immediately after the grievance is felt, the person, who is otherwise responsible, may have an opportunity to take corrective steps. Delay in this regard, would have its own effect. The parties would have an opportunity to put forward their contentions, and to adduce evidence, if trial is conducted. In a writ petition filed under Article 226 of the Constitution of India, such an exercise almost becomes impossible. Strictly speaking, the petitioners must have approached the civil Court for redressal. However, this Court is of the view that directing them to the civil Court at this length of time would lead to several complications.

Assessment of compensation in the matters of this nature poses its own difficulty. Though a fourth child may be a burden to the family with limited resources, civilization does not permit one to call such a child as ‘unwanted’. No child, or for that matter no creature is unwanted. The fact that people are spending millions of rupees in fertility clinics to beget children and are prepared to spend huge amounts for taking children on adoption needs to be kept in mind. One cannot call a child as unwanted, simply because it is born after sterilization operation was conducted. Even from

the point of view of incurring expenditure for bringing up the child, in the Indian context of the society, a child is never treated as burden to the parents. At the most, the society must feel its obligation to assist the parents to overcome the poverty, in bringing up the child in a better way. No parents, worth their name would declare that they would not bring their child unless necessary assistance is provided.

Having regard to the facts and circumstances of the case, this Court is of the view that ends of justice would be met if a sum of Rs.50,000/- (Rupees fifty thousand only) is awarded, as compensation to the first petitioner and a sum of Rs.1,00,000/- (Rupees one lakh only) is awarded to the third petitioner. The amount of Rs.1,00,000/- awarded to the third petitioner shall be kept in a fixed deposit till she attains the age of majority, in a nationalized bank. The accrued interest shall be utilized for her education. The respondents shall deposit the amount awarded within two months from today.

The writ petition is accordingly allowed. There shall be no order as to costs.

_____

07.02.2007

Note: L.R. Copy to be marked.
kdl

---

[1] AIR 2000 SC 1888

[2] 2004 ACJ 1479